

AUG. 31. 2007 5:45PM

NO. 3952 P. 1/9

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FACSIMILE COVER SHEET

Date: August 31, 2007

To: Director, Jack Harvey, Technology Center 2100

Fax No.: 571-273-8300

Confirmation No. 3943

From: Nils E. Pedersen

Number of pages being transmitted, including this cover sheet: 9

Please direct all questions concerning the transmittal of these pages to Nils E. Pedersen.

RE: Serial No. 10/611,937 (Takashi HASHIMOTO et al.), filed July 3, 2003

MESSAGE:

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PAGE 1/9 * RCVD AT 8/31/2007 4:48:27 PM [Eastern Daylight Time] * SVR:USPTO-EFXXRF-2/3 * DNIS:2738300 * CSID:202 721 8250 * DURATION (mm-ss):02-34

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August 31, 2007

VIA FACSIMILE
1-571-273-8300

URGENT

Director Jack Harvey
 Technology Center 2100
 U.S. Patent and Trademark Office
 P.O. Box 1450
 Alexandria, VA 22313-1450

Attn: Director Jack Harvey

Re: U.S. Patent Application
 Takashi HASHIMOTO et al.
 Serial No. 10/611,937
Our Ref: 2003 0881A/ALD/01903

Dear Mr. Harvey,

This letter is in regard to the above-referenced application. I am writing to you as a partner in our firm and the supervisor of the attorney, Mr. Andrew Dunlap, that is prosecuting the application in front of the Office.

We wanted to bring your attention to a situation regarding this application. Briefly stated, the issue concerns the interpretation of the claim language. Because we find the Examiner's position in the case to be, honestly, quite incredible, and nowhere near what could be considered the "broadest reasonable" construction of the claim language, we felt that we needed to contact you.

The current Examiner is Tonia Meonske, and her supervisor is Alfred Kindred; the former Examiner in the case was Mr. Vincent Lai. The Examiners are taking the position that the term "plurality" does not necessarily mean "more than one." Please see the Interview Summary Form and the Advisory Action that is attached hereto.

The basic language that is at issue is the phrase "a plurality of second processing units." Mr. Dunlap had conducted an interview with Examiner Vincent Lai and Supervisor Alfred Kindred on June 27, 2007. During the interview they took the position that if claim 16, the relevant claim, did in fact require more than one second processing unit, then the claimed invention would be distinguishable over the prior art. Mr. Dunlap pointed out that the phrase "a plurality of second processing units" requires there to be more than one second processing unit.

AUG. 31. 2007 5:46PM

NO. 3952 P. 3/9

Hirano Patent Office
August 31, 2007
Page 2

Mr. Dunlap pointed out that not only is the word "unit" used in its plural form, the word "plurality" clearly indicates that there must be more than one unit.

As you can see from the Advisory Action, Examiner Meonske and Mr. Kindred continue to take the position that "a plurality of second processing units" can be interpreted to be met by a reference having a single second processing unit. My understanding is that part of the process in the interview was to make sure that this was in fact the Examiner's position, and not that the reference was somehow being interpreted to have a plurality of the claimed second processing units; the Advisory Action further makes this clear.

Our client even agreed to amend the claims to recite that there are "at least two" units at the Examiner's suggestion, because we did not feel that this changed the scope of coverage in any way whatsoever. However, amazingly enough, the Examiner considers this to be a new issue.

I have to say, in my four years as an Examiner with the Office, and in my nineteen years of prosecuting patent applications since then, I don't think I have ever seen such an outlandish position being maintained by both an Examiner and a Supervisor. I find it, frankly, quite incredible, and the only conclusion I can reach is that the Office is simply trying to force our client to file an RCE when such is in fact neither necessary nor appropriate. I also have to say that I raised this situation at a weekly meeting with the other attorneys in our office, of which the majority are former Examiners, including Primary Examiners and one former SPE. None of them could believe that this position was being seriously taken by the Office.

It is my hope that your intervention in this situation will help return some sense of rationality to the Office's handling of this case. Please feel free to give me a call at 202-721-8206 if you would like to discuss it.

Otherwise, I thank you very much for any consideration you can give to this situation in the hope that we can in fact avoid anymore unnecessary expense to our client due to the Office's handling of the case.

Yours very truly,

WENDEROTH, LIND & PONACK, L.L.P.

By


Nils E. Pedersen

NEP/krp
Enclosures

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NO. 3952 P. 4/9



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,937	07/03/2003	Takashl Hashimoto	2003_0881A	3943
513 7590 07/05/2007 WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021				
			EXAMINER LAI, VINCENT	
			ART UNIT 2181	PAPER NUMBER
			MAIL DATE 07/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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NO. 3952 P. 5/9

AUG 31 2007

Interview Summary	Application No.		Applicant(s)	
	10/611,937		HASHIMOTO ET AL.	
	Examiner		Art Unit	
	Vincent Lai		2181	

All participants (applicant, applicant's representative, PTO personnel):

(1) Vincent Lai. (3) Andrew Dunlap.

(2) Alford Kindred. (4) _____

Date of Interview: 27 June 2007.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal (copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____

Claim(s) discussed: 16.

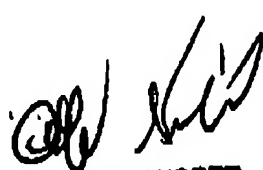
Identification of prior art discussed: Baker et al (U.S. Patent # 6,347,344 B1).

Agreement with respect to the claims: f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.


ALFORD KINDRED
PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

AUG. 31. 2007 5:47PM

NO. 3952 P. 6/9

Continuation Sheet (PTOL-413)

Application No. 10/611,937

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Mr. Dunlap discussed the limitations of claim 18, pointing out specifically wehre on figures 2 and 5 of the application where each limitation can be found. Mr. Dunlap then discussed his contention that there can only be one selector found in the Baker reference. Examiner contends that the claims can be broadly interpreted that only one second data processing unit exists and thus the one selector of Baker (which is a contention of Mr. Dunlap that still has to be reviewed by the Examiner) would read onto the claims. Mr. Dunlap suggested an amendment of "a plurality of at least two second data processing unit," which would appear to overcome the reference of record based on the current understanding of the reference by the Examiner.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,937	07/03/2003	Takashi Hashimoto	2003_0881A	3943
513 7590 08/21/2007 WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021			EXAMINER MEONSKA, TONIA L	
			ART UNIT 2181	PAPER NUMBER
			MAIL DATE 08/21/2007	DELIVERY MODE PAPER

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The time period for reply, if any, is set in the attached communication.

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AUG. 31. 2007 5:47PM

AUG 31 2007 NO. 3952 P. 8/9

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/611,937

HASHIMOTO ET AL.

Examiner

Tonia L. Meonske

Art Unit

2181

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 02 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 02 August 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)); to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 16-20.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Tonia L. Meonske
 TONIA L. MEONSKA
 AUGUST 15, 2007

AUG. 31. 2007 5:48PM

NO. 3952 P. 9/9

Continuation Sheet (PTO-303)

Application No. 10/611,937

Continuation of 3. NOTE: The newly added limitation in claim 16 "at least two" would require a further search and/or consideration. Claim 16 claims "a plurality of second data processing units". This limitation does not require "at least two second data processing units". Merriam-webster's online dictionary defines "plurality" as "a number greater than another". Since one is greater than zero, then when you have one second data processing unit you have a plurality of second data processing units. Therefore the proposed limitation changes the scope of the claims and would require a further search and/or consideration.

TLM 08/15/07